

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE,

*Plaintiff,*

vs.

*Defendant.*

SECOND DIVISION

NO(s). 294457, 294861,  
297719, 298120

**ORDER GRANTING MOTION FOR MODIFICATION AS TO  
MANNER OF SERVING SENTENCE**

On August 30, 2017, this cause came before the Court upon request of the Defendant, *pro se*, for a modification of the sentence originally imposed by this Court.

Pursuant to Tenn. Code Ann. §§ 40-35-212, 40-35-314, 40-35-306(c), and Tenn. R. Crim. P. 35, this Court retains jurisdiction over *the manner* of the service of a defendant's sentence under certain circumstances. As the Sentencing Commission Comments to Rule 35 have noted, though, the purpose of allowing trial courts the authority to modify sentences is intended to allow modification "only in circumstances where an alteration of the sentence may be proper in the interests of justice." A petition to modify a sentence, therefore, is not to be treated as an appeal of the original sentence.<sup>1</sup> Instead, because the focus in these proceedings is on those "post-sentencing information or developments [that have] arisen to warrant a reduction of his [or her] sentence in the interest of justice," denial of the motion may be proper where the defendant has not shown that these circumstances exist.<sup>2</sup>

<sup>1</sup> See *State v. Martin*, No. E2015-01814-CCA-R3-CD, 2016 WL 4446632, at \*5 (Tenn. Crim. App. Aug. 22, 2016).

<sup>2</sup> See *State v. Ruiz*, 204 S.W.3d 772, 778 (Tenn. 2006) (citing *State v. McDonald*, 893 S.W.2d 945, 948 (Tenn. Crim. App. 1994)).

The same is true with respect to applications to suspend the balance of a sentence under Tenn. Code Ann. §§ 40-35-306(c) and 40-35-314, and the defendant must show that “post-sentencing information or developments have arisen that warrant an alteration [of his or her sentence] in the interest of justice.”<sup>3</sup>

Importantly, Tenn. R. Crim. P. 35 “does not vest the defendant with a remedy as of right. Rather, this rule commits the granting of relief to the sound discretion of the trial court.”<sup>4</sup> Moreover, Rule 35(c) “does not contemplate a formal hearing,” and it allows for this Court to review a request for sentence modification without first holding a hearing.<sup>5</sup>

Having reviewed and carefully considered the entire request from the Defendant, as well as holding a hearing on this matter, the Court respectfully finds that the submission alleges, and that the Defendant has shown, a change in circumstances sufficient to warrant the suspension of the remainder of the sentence “in the interests of justice.”<sup>6</sup>

The Defendant argues that continued confinement will have a detrimental effect on his health. The Court agrees. Absent an emergent condition, the Court typically defers to the informed and considered judgment of trained medical staff as to the presence of a particular diagnosis and as to an appropriate course of treatment. To help facilitate a defendant’s treatment, this Court has previously considered medical furloughs if resources are not otherwise available at the incarcerative facility.

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<sup>3</sup> See *State v. Ruiz*, 204 S.W.3d 772, 778 (Tenn. 2006); see also *State v. Hampton*, No. W2015-00780-CCA-R3-CD, 2016 WL 4200176, at \*3 (Tenn. Crim. App. Aug. 8, 2016).

<sup>4</sup> See *State v. Edenfield*, 299 S.W.3d 344, 346 (Tenn. Crim. App. 2009).

<sup>5</sup> See *State v. Edenfield*, 299 S.W.3d 344, 348 (Tenn. Crim. App. 2009).

<sup>6</sup> See Tenn. R. Crim. P. 35, Advisory Comm’n Comments; see also *State v. McDonald*, 893 S.W.2d 945, 947 (Tenn. Crim. App. 1994) (noting appropriate case for modification may arise when, for example, “unforeseen, post-sentencing developments would permit modification of a sentence in the interest of justice.”).

In the present case, the Defendant has presented specific and identifiable proof of serious medical conditions. For example, the undisputed medical proof has shown that the Defendant has need for cancer treatment, as well as for psychiatric and orthopedic services.<sup>7</sup> However, the proof also shows that adequate treatment has not been provided to the Defendant, despite (i) repeated and admitted requests from the Defendant; and (ii) an acknowledgement that the Defendant executed the appropriate medical releases necessary to receive proper treatment.

Further, the denial of healthcare treatment for the cancerous condition and, initially, for the psychiatric condition was based, at least in part, upon the Defendant's alleged "refusals" to accept medical treatment. However, upon further inquiry, the proof shows clearly that these "refusals" have absolutely no credible or appropriate basis in fact and are demonstrably contradicted by other evidence. Little to no follow-up inquiry or examination was provided to the Defendant during his incarceration to confirm the basis for these "refusals" or to determine whether the Defendant had changed his mind.<sup>8</sup>

Although these medical conditions were present when the plea was entered and the sentence was imposed, the Court finds that the absence of any adequate treatment has been detrimental to the Defendant's health. The Court further finds that the Defendant himself has the ability, if released from custody, to address his healthcare needs, including that he has available medical insurance and access to appropriate physicians and other healthcare services. Accordingly, in the interests of justice, this Court finds that other lesser measures are not

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<sup>7</sup> Indeed, despite the acknowledged serious medical needs with the Defendant's shoulder condition, the proof showed that he was not evaluated for the condition; that he did not receive an x-ray of his shoulder; and that he did not receive a developed course of treatment for the condition. Rather, the sole treatment—for what appears to the Court to be an obvious medical condition—was the simple administration of Tylenol.

<sup>8</sup> In fact, the only evidence of any follow-up treatment occurred on August 17, 2017, which was two weeks following the date of the letter sent to the Court, when the Defendant was provided access to psychiatric services.

effective to address Defendant's serious medical conditions and that modification of Defendant's sentence is therefore the only appropriate measure.

**WHEREFORE**, for the foregoing reasons, the Defendant's request for a modification of sentence is hereby respectfully **GRANTED** upon hearing. Pursuant to the above authorities, the balance of Defendant's sentence is hereby suspended, and the Defendant is ordered to be supervised through Hamilton County Probation, Level II, for the remainder of his sentence. The Defendant is hereby advised, as he was in open court, that violation of the terms and conditions of probation will result in revocation of the suspended sentence.

It is so ordered.

Enter, this the 31<sup>st</sup> day of August, 2017.



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TOM GREENHOLTZ, Judge